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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,595	07/11/2001	Shigeru Nakano	DAIN:642	7644

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EXAMINER
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CHOULES, JACK M

ART UNIT	PAPER NUMBER
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2167

DATE MAILED: 12/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/901,595	<b>Applicant(s)</b> NAKANO, SHIGERU	
	<b>Examiner</b> Jack M. Choules	<b>Art Unit</b> 2167	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 October 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,7 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,7 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

Claims 1-3, 7, and 13-16 are presented for examination claims 4-6, 8-12 and 17-21 having been previously canceled.

### ***Claim Objections***

Claims 1-3, 7, and 13-16 objected to because of the following informalities: the claims have been amended to change 'RF-ID' to 'RFID' which is a abbreviation commonly used in the prior art, however there is no antecedent basis for this form of the abbreviation in the specification. Examiner Suggests that the specification on page 5, lines 14 changing RF-ID to RFID so constancy is maintained. Other appropriate corrections are possible. The examiner only found the above mentioned instance in the specification, however the applicant is encouraged to check for others incase the examiner missed any occurrences and change them also. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Catan, US Patent 6,676,014, in view of "Synergy A Source Tagging Council Publication" [hereinafter Synergy]. Note the Synergy reference is dated as Spring 2000, further review shows on page 7 that an Upcoming event is listed as May 10-11, therefore this art is considered to be published before 10 May 2000 based on prima-facie evidence.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

As to claims 1 and 13, Catan disclosed the invention substantially as claimed including a data processing system ["DP"] comprising "A food information management system (column 3, lines 50-67 and column 4, lines 1-24), comprising: each of the food packages comprising an RFID tag storing at least food identification information relating to the food in the food package (column 3, lines 14-30, column 10, lines 17-50, and column 13, lines 19-34); a food information center comprising a food database, the food database comprising food information classified by the food identification information (column 14, lines 43-67, column 15 lines 1-39 and column 24 lines 27-40); read means for reading the food identification information provided on the RFID tags and for sending the food identification information to the food information center; output means for receiving the food information from the food information center (column 14, lines 43-67, column 15 lines 1-39 and column 24 lines 27-40); and display means capable of

displaying the food information (column 18, lines 23-47); wherein: when the read means sends the food identification information to the food information center, the food information center retrieves the food information associated with the food identification information and sends the same-food information to the output means (column 14, lines 43-67, column 15 lines 1-39, column 18, lines 23-47 and column 24 lines 27-40); the read means and the output means are provided in a cooking device (column 10, lines 2-15, column 13, lines 19-21 and column 19 lines 13-15), and the read means and the output means interact with the food information center remotely over a network (Figure 1); and the display means is connected to the output means(column 18, lines 23-47)."

Catan does not detail "a food processing plant for producing and shipping food in food packages;" However, Synergy describes a system which includes "a food processing plant for producing and shipping food in food packages (page 1 details meat packaging which shows processing of food items and inclusion of tags, page 6 shows a more general processing and shipping system inserting RFID tags)."

It would have been obvious to one of ordinary skill in the DP art at the time of the applicant's invention to combine the teachings of Synergy to insert tags at processing with those of Catan providing information at the site of food preparation (microwave oven) because although labels are available which could be attached at any time in the supply chain the tags inserted at the processing plant can be inserted inside packaging and be out of sight to user (Synergy page 1) and used to track and gather information throughout the supply chain without opening cases or other containers to gain access to

the packages (Synergy page 6) improving the versatility of the DP system moreover the processing location is where the tags could be provided at a lower per package cost.

As to Claims 2, 3, 14, and 15, "The food information management system according to claim 1, wherein the food information comprises cooking conditions for cooking the food, nutritive ingredients in the food, energy-producing values of the food and a weight of the food." And "The food information management system according to claim 1, wherein the food information comprises nutritive ingredients in the food, forbidden ingredients in the food, energy-producing values of the food and g-weight of the food." These claims specify the information provided for display however it is considered non-functional descriptive material, as it provides no function in the claimed invention. As such it is given no patentable weight see the **Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility, Annex IV:**

When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory and should be rejected under 35 U.S.C. § 101. In addition, the examiner should inquire whether there should be a rejection under 35 U.S.C. § 102 or 103. The examiner should determine whether the claimed nonfunctional descriptive material be given patentable weight. The USPTO must consider all claim limitations when determining patentability of an invention over the prior art. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983). The USPTO may not disregard claim limitations comprised of printed matter. See Gulack, 703 F.2d at 1384, 217 USPQ at 403; see also Diehr, 450 U.S. at 191, 209 USPQ at 10. However, the examiner need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate. See In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); In re Ngai, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

The claimed subject matter is statutory as claims 1 and 13 recite statutory subject matter however the limitations to non functional descriptive material are given no weight

ant these claims are considered rejected under the same rejections as allied to claims 1 and 13 above.

As to Claims 7 and 16, Catan describes "The food information management system according to claim 1, wherein the network is the Internet (figure 1, index 130 and Column 9, lines 53-63).

Claims 1-3, 7, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye, Joseph [hereinafter Kaye] "Counter Intelligence White Paper," in view of "Synergy A Source Tagging Council Publication" [hereinafter Synergy] and further in view of Rothschild, US Patent No. 6,651,053. Note the Synergy reference is dated as Spring 2000, further review shows on page 7 that an Upcoming event is listed as May 10-11, therefore this art is considered to be published before 10 May 2000 based on prima-facie evidence.

As to claims 1 and 13, Kaye disclosed the invention substantially as claimed including a data processing system ["DP"] comprising "A food information management system (page 16), comprising: each of the food packages comprising an RFID tag storing at least food identification information relating to the food in the food package (page 5, 14, and 16); "read means for reading the food identification information provided on the RFID tags and for sending the food identification information to the food

information center (page 18);; and display means capable of displaying the food information (page 8); wherein: when the read means sends the food identification information to the food information center, the food information center retrieves the food information associated with the food identification information and sends the same-food information to the output means (page 8); the read means and the output means are provided in a cooking device (page 8), and the read means and the output means interact with the food information center remotely over a network (page 8); and the display means is connected to the output means (page 8)."

Kaye does not detail "a food processing plant for producing and shipping food in food packages;" However, Synergy describes a system which includes "a food processing plant for producing and shipping food in food packages (page 1 details meat packaging which shows processing of food items and inclusion of tags, page 6 shows a more general processing and shipping system inserting RFID tags)."

It would have been obvious to one of ordinary skill in the DP art at the time of the applicant's invention to combine the teachings of Synergy to insert tags at processing with those of Kaye providing information at the site of food preparation (microwave oven) because although labels are available which could be attached at any time in the supply chain the tags inserted at the processing plant can be inserted inside packaging and be out of sight to user (Synergy page 1) and used to track and gather information throughout the supply chain without opening cases or other containers to gain access to the packages (Synergy page 6) improving the versatility of the DP system moreover the processing location is where the tags could be provided at a lower per package cost.



Kaye and Synergy do not detail an “a food information center comprising a food database, the food database comprising food information classified by the food identification information” or “output means for receiving the food information from the food information center.” However, Rothschild shows searching a database over a network or internet to retrieve product data associated with a product identification contained in the UPC (column 6, lines 23-35), Kaye already teaches RFID tags being preferable over UPC labels and use of a identification input and a display associated with the food preparation and or cooking device as set forth above. It would have been obvious to one of ordinary skill in the DP art at the time of the applicant's invention to combine the teachings of Rothschild to provide a information center adaptable to food products with those of Kaye providing information at the site of food preparation (microwave oven or countertop) because the information Kaye details providing (Kaye, page 18) would be provided from a database accessible to product provider for easy update and maintaining of the data and easy access to the user (Rothschild, column2 line 66-67, column 3 lines 1-52 and column 6, lines 23-35) improving the versatility of the DP system moreover the processing location is where the tags could be provided at a lower per package cost.

As to Claims 2, 3, 14, and 15, “The food information management system according to claim 1, wherein the food information comprises cooking conditions for cooking the food, nutritive ingredients in the food, energy-producing values of the food and a weight of the food.” And “The food information management system according to

claim 1, wherein the food information comprises nutritive ingredients in the food, forbidden ingredients in the food, energy-producing values of the food and g-weight of the food." These claims specify the information provided for display however it is considered non-functional descriptive material, as it provides no function in the claimed invention. As such it is given no patentable weight see the **Interim Guidelines for**

**Examination of Patent Applications for Patent Subject Matter Eligibility, Annex IV:**

When nonfunctional descriptive material is recorded on some computer-readable medium, in a computer or on an electromagnetic carrier signal, it is not statutory and should be rejected under 35 U.S.C. § 101. In addition, the examiner should inquire whether there should be a rejection under 35 U.S.C. § 102 or 103. The examiner should determine whether the claimed nonfunctional descriptive material be given patentable weight. The USPTO must consider all claim limitations when determining patentability of an invention over the prior art. In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983). The USPTO may not disregard claim limitations comprised of printed matter. See Gulack, 703 F.2d at 1384, 217 USPQ at 403; see also Diehr, 450 U.S. at 191, 209 USPQ at 10. However, the examiner need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate. See In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); In re Ngai, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).

The claimed subject matter is statutory as claims 1 and 13 recite statutory subject matter however the limitations to non functional descriptive material are given no weight and these claims are considered rejected under the same rejections as allied to claims 1 and 13 above.

As to Claims 7 and 16, Kaye describes "The food information management system according to claim 1, wherein the network is the Internet (page 6).

Note: As to the discussion with applicants representative of a possible rejection under 35 U.S.C. 103(a) over prior art presented in the PCT examiner on closer review the examiner found that said art did not in fact support a rejection and current rejection was stronger.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Montanari et al      5,478,990      Tracking the history of food products using tags and a database.

Ruppert et al.      6,640,002      RFID tags used to purchase (providing price information etc) and provide security for groceries using a database.

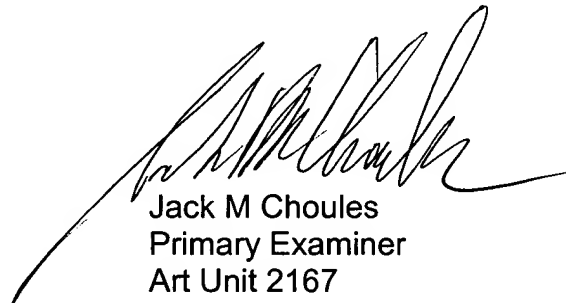
Ollivier, M. M.      "RFID – A Practical Solution For Problems You Didn't Even Know You Had!"

Want et al.      "Bridging Physical and Virtual Worlds with Electronic Tags."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack M. Choules whose telephone number is (571) 272-4109. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jean R. Homere can be reached on (571) 272-3780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jack M Choules  
Primary Examiner  
Art Unit 2167

19 December 2005